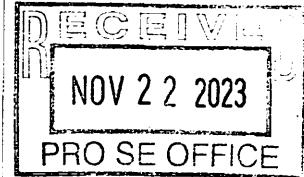


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November 16, 2023

Via Priority Mail

Hon. Judge LaShann DeArcy Hall
United States Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Leroy Jones v. Mega Home & Linen, Inc. and Shaun Zakaria
Case No. 1:22-CV-6010 (LDH) (CLP)

Dear Judge, DeArcy Hall,

I am the defendant. I am writing pursuant to your individual practices, Section III(A)(1)(a), to ask you to hold a pre-motion conference pursuant to Federal Rule 12(c), to dismiss Counts One (1), Two (2), Six (6), Seven (7), and Eight (8), of the complaint.

Counts One (1) and Two (2) should be dismissed because the complaint does not allege that plaintiff is covered by the Fair Labor Standards Act ("FLSA"). A plaintiff is covered by the FLSA where he is either engaged in commerce or in the production of goods for commerce; or employed in an enterprise engaged in commerce or in the production of goods for commerce (enterprise coverage). *Jian Long Li v. Li Qin Zhao*, 35 F.Supp.3d 300, 305 (EDNY 2014). Plaintiff does not allege that he is covered under either the individual or enterprise theories.

Further, Counts Six (6), Seven (7) and Eight (8) should be dismissed for lack of standing. Article III standing requires a plaintiff to show (1) an injury in fact; (2) a causal connection between that injury and the conduct at issue; and (3) a likelihood that the injury will be redressed by a favorable decision. *Maddox v. Bank of NY Mellon Trust Co.*, NA, 19 F.4th 58 (2d Cir. 2021) Courts in this District and in the Southern District have dismissed claims for statutory penalties on the grounds that plaintiff lack standing to bring them in the District Court. See, e.g., *Kwon v. 462 BKCS Ltd.*, 20 Civ. 9105, at

Hon. Judge LaShann DeArcy Hall

November 10, 2023

Page 2

Docket 55, dismissing wage notice claims *sua sponte* for lack of Article III standing.
(Opinion and Order provided).

I respectfully request the pre-motion conference be held in person. I am not comfortable appearing telephonically.

I thank Your Honor for considering this application.

Respectfully submitted,


Shaun Zakaria

cc: Defense Counsel (by E-mail)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

YOUNG KWON, et al.,

Plaintiffs,

-against-

462 BKCS LTD., et al.,

Defendants.

20-CV-09105 (AS)

OPINION & ORDER

ARUN SUBRAMANIAN, United States District Judge:

This is a lawsuit for unpaid wages under the Fair Labor Standards Act and New York Labor Law. *See* Dkt. 38 ¶ 1. In addition, plaintiffs allege that defendants failed to provide proper wage notices, in violation of the New York State Wage Theft Prevention Act (WTPA). *See id.* ¶¶ 72–76. At a status conference held on September 13, 2023, defendants challenged whether plaintiffs had standing for those claims. The Court gave the parties the opportunity to submit additional authority for their respective positions. Plaintiffs failed to do so.

“Because the standing issue goes to this Court’s subject matter jurisdiction, it can be raised *sua sponte*.” *Cent. States Se. & Sw. Areas Health & Welfare Fund v. Merck-Medco Managed Care, L.L.C.*, 433 F.3d 181, 198 (2d Cir. 2005). For the reasons explained below, plaintiffs’ wage notice claims are DISMISSED *sua sponte* for lack of Article III standing.

In their complaint, plaintiffs allege that defendants failed to provide the required wage notices. Dkt. 38 ¶¶ 74–75. As explained in this Court’s opinion in *Cartagena v. Sixth Avenue West Associates LLC*, No. 23-cv-03611-AS (S.D.N.Y. Sept. 28, 2023), at Dkt. 20, such allegations are insufficient. Plaintiff must identify the “downstream consequences from failing to receive the required information” because “informational injury that causes no adverse effects cannot satisfy Article III.” *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2214 (2021).

Plaintiffs may amend their complaint to cure the standing deficiencies identified in this order no later than October 13, 2023. If they choose to do so, they should provide specific factual allegations regarding how defendants violated the WTPA and the resulting harm. Plaintiffs are reminded that they will need to prove standing at trial.

SO ORDERED.

Dated: September 29, 2023
New York, New York



ARUN SUBRAMANIAN
United States District Judge

SHAUN ZAKARIA
105 JAMAICA AV.
Brooklyn NY 11207

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
225 CADMAN PLAZA EAST
Brooklyn, New York 11201

ATT: Hon. Judge Lashawn Deancy Hall

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